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Elder Abuse: The Merit of Mandatory Reporting Laws and the Minnesota Response

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ELDER ABUSE: THE MERIT OF MANDATORY REPORTING LAWS AND THE MINNESOTA RESPONSE

Abuse of the aged is one of our society's dirty secrets. Minnesota, however, has been at the forefront of the struggle for intelligent solutions to elder abuse. This Note examines the scope of the elder abuse problem, its causes, the tentative legislative solutions, and the legal difficulties propounded by some statutes, but perhaps avoided by the Minnesota Vulnerable Adults Protection Act.

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I. INTRODUCTION

For many generations there has existed the universal moral belief that children should respect and honor their parents.¹ People, unfortunately, do not always practice what they preach. Family abuse of our nation's elderly is shockingly extensive, but only recently recognized.² The

1. HOUSE SELECT COMM. ON AGING, 97TH CONG., 1ST SESS., ELDER ABUSE: AN EXAMINATION OF A HIDDEN PROBLEM, at XI (Comm. Print 97-277 1981) [hereinafter cited as ELDER ABUSE HOUSE REPORT]. This report begins by noting a significant relationship between the great past cultures and the respect these cultures demanded be shown their elderly:

[T]here is a positive correlation between care and respect to the elderly and the greatness of a civilization. Novelist and social critic Simone de Beauvoir expanded upon this observation in "The Coming of Age," when she noted, "The manner in which a society behaves with its older people unequivocally reveals the truth . . . of its principles and its ends."

Id. This same respect has never been universally present between a husband and wife. Domestic violence was socially acceptable as early as 2500 B.C. In those days if a woman verbally abused her husband, her name would be engraved on a brick which was used to knock out her teeth. Pirro, *Domestic Violence: The Criminal Court Response*, N.Y. ST. B.J., Oct. 1982, at 352, 352. In fact, until 1976, a man in New York could assault his wife with no criminal consequences. *Id.* at 353.

2. See ELDER ABUSE HOUSE REPORT, *supra* note 1; THE BATTERED ELDER SYN-

United States House Select Committee on Aging³ completed a full-scale elder abuse investigation in 1981.⁴ The Committee found that one out of every twenty-five, roughly one million, elderly Americans might be abused by their families or primary caretakers⁵ each year.⁶

The problem of elder abuse is complicated. Extensive research on the subject is hampered by the lack of data and the difficulty in obtaining accurate data.⁷ Abused elders are often unwilling to report the abuse or deny that it is happening.⁸ Abusers are generally experiencing economic and personal problems.⁹ The extra burden of elderly care can turn frustration into aggression, resulting in abuse.

The purpose of this Note is to bring the elder abuse problem to the attention of lawyers, legislators, and the public by discussing the nature

DROME: AN EXPLORATORY STUDY (M. Block & J. Sinnott eds. 1979) [hereinafter cited as M. BLOCK & J. SINNOTT]; J. CROUSE, D. COBB, B. HARRIS, F. KOPECKY & J. POERTNER, ABUSE AND NEGLECT OF THE ELDERLY IN ILLINOIS; INCIDENCE AND CHARACTERISTICS, LEGISLATION AND POLICY RECOMMENDATIONS (1981) [hereinafter cited as J. CROUSE]; Hickey & Douglass, *Neglect and Abuse of Older Family Members: Professionals' Perspectives and Case Experience*, 21 GERONTOLOGIST 171 (1981); Lau & Kosberg, *Abuse of the Elderly by Informal Case Providers*, AGING, Sept.-Oct. 1979, at 13; see also Katz, *Elder Abuse*, 18 J. FAM. L. 695 (1980).

3. The House Select Committee on Aging has spent considerable time and effort recognizing and addressing the area of elder abuse. In the future, the White House Conference on Aging will be active in the Elder Abuse area. The first Conference was called by President Truman in 1950. Since then, this conference has been responsible for "mobilizing support for the subsequent passage of Medicare, Medicaid and the Older Americans Act of 1965, which among other things, created the Administration on Aging. The 1971 White House Conference . . . result[ed] in more than 600 recommendations for nutrition, transportation, housing and the elimination of poverty among the aged." Wylie, *America, the Elderly: A Report on the White House Conference on Aging*, FAM. ADVOC., Spring 1981, at 16, 16 (1981). Wylie encouraged lawyers to participate in the 1981 White House Conference on Aging. He stressed that as America ages, many more of lawyers' clients will be elderly. He projected that elder abuse would be a primary topic to be covered at the conference. The other areas were: civil rights for the elderly, incentives for more home care, consumer problems, and Social Security reform. He ended by inviting lawyers to participate in the White House Conference and suggests other ways they might become actively involved in this area. *Id.* at 18.

4. ELDER ABUSE HOUSE REPORT, *supra* note 1.

5. A caretaker is any individual or institution who is responsible for the care of an elder. The caretaker may or may not be a family member of the elder. In Minnesota, a caretaker is "an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, or by contract, or by agreement." MINN. STAT. § 626.557(2)(c) (Supp. 1983).

6. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XIV-XV.

7. "The literature on family violence contains no reference to behavioral patterns of elder abuse by adult children, other family members or caretakers. Few researchers and professionals have explored the possibility that the aged segment of the population are victims of abuse [as] the battered child and battered wife syndromes." M. BLOCK & J. SINNOTT, *supra* note 2, at 49.

8. See *infra* notes 79-80 and accompanying text.

9. See *infra* notes 56-67 and accompanying text.

and extent of the problem as well as current legislative responses and proposed policy alternatives. The Note emphasizes that mandatory reporting laws are necessary despite their shortcomings. In order to correct these shortcomings, protective service laws must be changed. Community services must also be developed to aid both victims and perpetrators of abuse. The Minnesota response to these needs has been good. Finally, the courts must be made aware of the legislative changes and new community services as they become available. Courts, legislatures, and local agencies must coordinate their efforts if the problem of elder abuse is to be effectively alleviated, or ideally, eliminated.

II. NATURE AND EXTENT OF ELDER ABUSE

A. Elder Abuse Defined

According to current studies conducted in the United States, elder abuse is a serious problem needing educated, responsible action¹⁰ by social workers, policymakers, and the public.¹¹ These studies, however, lack a common definition of elder abuse.¹² Categories are defined differently in each study, making it difficult to assess the incidence of abuse with any accuracy.¹³ Academics, professionals, and legislators must agree on a common definition in order to compare research and draw useful conclusions which will help policymakers deal with the problem.¹⁴ The United States House Select Committee on Aging has developed a comprehensive definition of elder abuse. "Elder abuse is defined simply as the physical, sexual, psychological, or financial abuse of the elderly or

10. Due to the horror and emotion of the elder abuse problem, policymakers may be tempted to act quickly rather than responsibly. In order to act in an educated and responsible way, social workers and policymakers must balance the states' interests against the deprivation of individual rights that may result from possible legislation quickly enacted. See *infra* notes 97-106 and accompanying text.

11. See authorities cited *supra* note 2.

12. See Faulkner, *Mandating the Reporting of Suspected Cases of Elder Abuse: An Inappropriate, Ineffective and Ageist Response to the Abuse of Older Adults*, 16 FAM. L.Q. 69, 70 (1982); Katz, *supra* note 2; see also J. CROUSE, *supra* note 2, at II-86 to 88. Both Faulkner and the Crouse study agree that legislation should define abuse and neglect narrowly.

13. For example, in some studies, "[c]riminal behavior, such as assault, is not statistically differentiated from non-criminal behavior, such as failure to supervise." Faulkner, *supra* note 12, at 73.

14. See Faulkner, *supra* note 12, at 74.

In general, the studies fail to provide the policymaker with the appropriate tools from which to fashion an appropriate remedy because they offer only tentative statistics based upon broad and differing definitions.

The problem of elder abuse and neglect while poorly defined and quantified, nonetheless exists and deserves the attention of policymakers. Proposed solutions will fail, however, unless definition and scope are more adequately researched. The danger of too broad a definition is the inappropriate enlargement of the scope of the problem, therefore dramatizing, with statistics, the need for relief.

Id. at 74.

otherwise causing the deprivation of their human rights by their relatives or caretakers."¹⁵

Physical abuse includes violent acts of aggression such as assault and murder.¹⁶ The cases of reported assault are endless. Two typical accounts reported by the Committee include an Atlanta police report of an older woman attacked by her thirty year old son with a butcher knife. He lived with her but refused to work and she continued to support him.¹⁷ Another report comes from a guardian who testified before a Committee hearing. She reports that her ward, a seventy-eight year old New York woman in a wheelchair, was repeatedly assaulted by her thirty-six year old grandson. The woman was hospitalized seven times. She refused to have her grandson arrested.¹⁸

Neglect is another form of physical abuse.¹⁹ Neglect can be passive actions of a well-meaning caretaker who is unable to care for the elder.²⁰ It can also be active, however, such as the deliberate withholding of necessities or medical care.²¹ Both types can be equally severe. Examples of neglect include the case of a seventy year old North Carolina woman who was found lying in her own urine and feces. The woman had been neglected by her daughter. She was malnourished and suffered from untreated second and third degree burns on her knees and thighs. Another woman neglected by her family was admitted to the hospital several times for malnutrition and dehydration. One time she had maggots covering her entire body.²²

The most common type of abuse is psychological.²³ Psychological abuse can be verbal, such as name-calling.²⁴ Psychological abuse also

15. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 1. Because this definition will most likely be used to formulate policy and legislation, the committee definition will be used for purposes of this Note. Primary caretakers are defined in the House report as "unrelated individuals placed in a role of providing care and services to the aged usually because the seniors have no other relatives living or who will accept the responsibility." *Id.* at 2.

16. *See id.* at 3.

17. *Id.*

18. *Id.* at 6. For a full account of this case, see SUBCOMM. ON HUMAN SERV., HOUSE SELECT COMM. ON AGING, DOMESTIC VIOLENCE AGAINST THE ELDERLY, 28-31 (1981).

19. "Negligence can be defined as conduct which is careless; it is the breach of a duty which results in injury to a person or in a violation of rights." ELDER ABUSE HOUSE REPORT, *supra* note 1, at 7.

20. Palincsar & Cobb, *The Physician's Role in Detecting and Reporting Elder Abuse*, 3 J. LEGAL MED. 413, 415 (1982).

21. *Id.*

22. *See* ELDER ABUSE HOUSE REPORT, *supra* note 1, at 7-13; J. CROUSE, *supra* note 2, at I-6 to I-10.

23. M. BLOCK & J. SINNOTT, *supra* note 2, at 50; J. CROUSE, *supra* note 2, at ii-2; Katz, *supra* note 2, at 698.

24. For example, a daughter-in-law kept her widowed mother-in-law in the basement. The mother-in-law was verbally assaulted any time she tried to leave. After the mother broke her arm, the daughter severely twisted the broken arm several times apply-

includes "systematic effort[s] to dehumanize the elderly, sometimes with the goal of driving a person to insanity or suicide."²⁵ The most common example of such systematic attempts is threatening the elderly victim with nursing home placement, which the victim fears more than the abuse.²⁶ In Massachusetts, an immigrant woman in her seventies lived with her niece who stole her aunt's checks, and locked up the food and starved her aunt. The niece also began deportation proceedings and constantly threatened nursing home placement.²⁷

Financial abuse is material exploitation of the elderly, including theft, conversion, or misappropriation of property.²⁸ One case reports a grandson who refused to provide medical attention to his dependent grandmother who had cancer. "He did not want the woman's income and property needlessly depleted."²⁹ Sometimes financial abuse is accomplished by physical abuse, force, or fraud.³⁰ As noted by a House of Representatives subcommittee:

The Minneapolis Tribune in 1978 reported a number of abuses which involved for-profit estate management corporations who are appointed to sell off the assets of the elderly, usually to allow the proceeds to be applied toward nursing home placement. Following the death of the elderly, the purpose is usually to convert assets into cash which can be divided among the family members.³¹

Financial abuse also includes undue influence in the writing of wills.³²

Abuse can result in a serious denial of basic human rights including deprivation of the right to personal liberty,³³ the right to due process of law,³⁴ the right to privacy,³⁵ and the right to vote.³⁶ These long-term

ing physical force as well as verbal abuse. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 25; Katz, *supra* note 2, at 698. Additional cases of psychological abuse were reported by the House committee. See ELDER ABUSE HOUSE REPORT, *supra* note 1, at 24-26.

25. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 24.

26. *Id.*

27. *Id.* at 24-25.

28. *Id.* at 13.

29. *Id.* at 24.

30. *Id.* at 13.

31. *Id.* at 19.

32. *Id.* at 13.

33. The right to personal liberty has been described in the ELDER ABUSE HOUSE REPORT as: "The right to move freely, the right not to be imprisoned in one's home, the right to be free from physical restraints, [which] are at the very essence of American democracy." *Id.* at 26-27.

34. The right to due process of law is a constitutional guarantee. U.S. CONST. amend. IV. It restrains the federal and state governments from depriving any person of life, liberty, or property without due process of law. This means that before a person can have a liberty or property interest taken away, the government must follow previously established procedures which ensure fairness. This right is important in the area of elder abuse because elders are more susceptible to being deprived of both their liberty and property as they age and become more vulnerable. The Crouse study of elder abuse in Illinois recognized that "[d]ue process safeguards are regarded as cumbersome bottlenecks by

consequences of abuse must be kept in mind when evaluating the severity of each particular abuse case. Such deprivations are not as obvious as the physical and emotional effects of the abuse itself but are certainly as important.

B. *Scope of the Problem*

The evidence revealed in the elder abuse studies and in the cases described in the House committee report has been characterized as "only the tip of the iceberg."³⁷ Abuse occurs in rural and urban areas, within all ethnic groups, and at all economic levels.³⁸ An estimated 500,000 to 1,000,000 parents or elders are abused in this country each year.³⁹ The problem is at least as serious as child abuse⁴⁰ but is reported only half as often. Whereas one in three child abuse cases is reported, perhaps only one in six elder abuse cases is reported.⁴¹ The number of abused elders is expected increase dramatically as inflation forces more adult children to care for their parents in their homes.⁴²

III. REASONS AND PROFILES

A. *Reasons for Abuse*

In order to promulgate educated policy and effective legislation, it is

some, but they often stand between an intrusive state and a person's freedom." J. CROUSE, *supra* note 2, at ii-5.

35. The right to privacy includes the constitutional right to be left alone. As more states make the commitment to protect vulnerable adults from abuse and neglect, however, this right conflicts with the state's interest. Gaining access to the home of an abused elder against his will or without his consent is a violation of the right to privacy. For an indepth legal analysis of the right to privacy and its relation to the elder abuse problem see J. CROUSE, *supra* note 2, at II-15 to 26.

36. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 30.

37. M. BLOCK & J. SINNOTT, *supra* note 2, at 5; *see also* Palincsar & Cobb, *supra* note 20, at 416 n.11.

38. Block and Sinnott have found that violence is situational rather than class-related. M. BLOCK & J. SINNOTT, *supra* note 2, at 10. Others have also found this to be true. Delores Roberts, an adult protective service worker for the District of Columbia, testified before the House Select Committee on Aging:

Every case that comes into our office is abuse, neglect, exploitation or all three, and it is not isolated to the poor. It is the rich, the affluent and the poor, the rich and the middle income. It is all the way across-the-board and we cannot get any help.

ELDER ABUSE HOUSE REPORT, *supra* note 1, at 116. The Illinois study found that although the problem was "across-the-board," the most urban and the most rural had the highest incidence of abuse while the suburban areas were the lowest. *See* J. CROUSE, *supra* note 2.

39. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 42.

40. For a general discussion of child abuse, *see* S. O'BRIEN, CHILD ABUSE A CRYING SHAME (1980).

41. ELDER ABUSE HOUSE REPORT, *supra* note 1, at XIV.

42. *Id.* at 42.

necessary to understand why elder abuse occurs.⁴³ The family has been viewed traditionally as the fundamental social institution that provides love and support to the family members.⁴⁴ Yet we live in an age of violence where people fear walking the streets at night and take precautions to secure themselves inside their homes.⁴⁵ "But these precautions offer scant protection to the millions of individuals who, quietly incarcerated behind those double-locked doors, become the victims of a greater danger than that which lurks on the city streets—the threat of family violence."⁴⁶ While most of the attention has been given to abuse of the elderly in nursing homes⁴⁷ and as crime victims,⁴⁸ the greatest source of abuse and neglect may be their own family.⁴⁹ Several reasons for abuse of elderly family members have been suggested.

Violence is often used within the family when nothing else works.⁵⁰ Most experts believe that family stress is the major precipitating factor in elder abuse.⁵¹ Stress may be caused directly from the economic, physical, and emotional difficulty of living with a dependent elderly relative as

43. Understanding the elements of elder abuse is also important on a more personal level. It is a situation in which many of us will find ourselves, first as a caretaker and later as a dependent elder. Steinmetz, *Elder Abuse*, AGING, Jan.-Feb. 1981, at 6, 10.

44. "The family is, and always has been, the most intimate and one of the most important of human groups . . . it can be said to be universal, existing in all known human societies." Scutt, *In Support of Domestic Violence: The Legal Basis*, 3 FAM. L. REV. 23, 23 (1980) (citing D. GIL, *BEYOND THE JUNGLE* (1979)). Guardianship and conservatorship laws are examples of the faith the legislature and the public had in the family unit. Guardians and conservators of the elderly were generally their children. Nevertheless, "society has become more mobile and children no longer remain near their parents. Therefore, a guardian or conservator is less likely to be a child of the ward or conservatee, removing whatever protection is inherent in the parent-child relationship." Wolfson, *The New Law on Guardianship and Conservatorship in Minnesota*, BENCH & B. OF MINN., Feb. 1982, at 33. The examples of elder abuse indicate that the parent-child relationship does not necessarily afford an elder any protection.

Today some legislators are using the integrity of the family as a reason why government should not become committed to aid victims of domestic abuse. Family integrity should excuse failure to invest government resources into social programs. See Schechter, *The Violent Family and the Ambivalent State: Developing a Coherent Policy for State Aid to Victims of Family Violence*, 20 J. FAM. L. 1, 34-35 (1981).

45. See Sedge, *Violence in American Society*, in M. BLOCK & J. SINNOTT, *supra* note 2, at 5.

46. *Id.*

47. For a discussion of legislative response to nursing home patient abuse, see Comment, *Nursing Home Patient Abuse Reporting: An Analysis of the Washington Statutory Response*, 16 GONZ. L. REV. 609 (1981).

48. For a discussion of the elderly as crime victims, see Georges & Kirksey, *Violent Crime Perpetrated Against the Elderly in the City of Dallas, October 1974-September 1975*, 7 J. ENVTL. SYS. 149 (1978); Norton & Courlander, *Fear of Crime Among the Elderly: The Role of Crime Prevention Programs*, 22 GERONTOLOGIST 388 (1982).

49. Steinmetz, *supra* note 43, at 7.

50. *Id.* at 8.

51. See ELDER ABUSE HOUSE REPORT, *supra* note 1, at 59; Katz, *supra* note 2, at 701; Steinmetz, *supra* note 43.

well as indirectly by unemployment, chemical dependency problems, or other intrafamily conflicts of the caretaker.⁵² The additional burden of caring for a dependent elder "has been identified as a breaking point with a potential for abuse and neglect."⁵³

As life expectancy increases,⁵⁴ elderly parents will be dependent on their children for periods of time longer than their children were dependent on them.⁵⁵ "Even with the most careful financial planning, it is unrealistic to assume that the majority will be able to spend their entire life totally independent of their children or their younger kin."⁵⁶ The costs of medical care are often too great for the elderly to meet on their fixed or limited incomes.⁵⁷ Consequently, the economic burden falls upon the family. Many of these families are on fixed incomes themselves.⁵⁸ The caretaker families find it difficult to meet the financial burden, particularly when faced with increasing inflation and unemployment.⁵⁹ Families often view medical costs of a dependent elderly parent as a waste of precious financial resources.⁶⁰

52. Katz, *supra* note 2, at 700-04.

53. Steinmetz, *supra* note 43, at 9.

54. Steinmetz states:

The last quarter of the 20th century can best be described by its shifting age structure

By the end of this century people under 65 years will have increased by 17 percent while those 65 to 75 will increase by 14 percent. The greatest increase, 53 percent, will occur among those 75 and older which has important implications since this group is more vulnerable to physical, mental and financial crisis requiring the care of their family and society.

Id. at 6; see also Brotman, *The Aging Society: A Demographic View*, AGING, Jan.-Feb. 1981, at 3.

55. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 64.

56. Steinmetz, *supra* note 43, at 10; see also Johnson, *The Dilemma of the Dutiful Daughter*, WORKING WOMAN, Aug. 1982, at 65.

57. Katz, *supra* note 2, at 701.

58. *Id.*

59. Federal and state government policies have done nothing to help families meet the medical costs of their dependent elderly relatives. In fact, the federal government has made it more difficult for elderly living with their families to receive aid than those living alone. All forms of aid, including financial and medical aid, are more difficult to receive if the elderly person lives with her family.

Community resources are generally less available to the elderly person who is cared for by the family than to the isolated person alone in the community. The result is often unrelentless stress caused by the constant responsibility placed upon or accepted by a relative who is ill-equipped by personality, other responsibilities, skill, age, or financial resources to cope with the task.

Katz, *supra* note 2, at 703 (citing Lau & Kosberg, *supra* note 2, at 13).

Other outside economic factors that may increase the financial stress on the caretaker family have to do with the time that parents become dependent. Often this dependency coincides with other major family expenses such as college tuition and weddings.

60. "The children may have unarticulated feelings that the parents' financial problems should be ignored, or even openly stated feelings that the parents' time is past and that the offsprings' financial resources should be spent on the advancement of their own families." Katz, *supra* note 2, at 701. This is especially true when the elderly parent's

Elder abuse also occurs in homes that do not experience economic difficulties. Other factors contribute to the stress that results in abuse. Caretakers often have complicated emotional problems.⁶¹ A common element of these emotional problems is that abusers are "battered children grown up."⁶² Violence is a way of life for these caretakers. Many battered children as adults abuse their own children.⁶³ Recent studies have also shown that parents who abuse their children are more likely to subsequently be abused by them.⁶⁴ Steinmetz⁶⁵ found that "children treated non-violently as they grow up attack their parents later on by 1 in 400; however, if a child is mistreated violently by the parent, the chance they'll attack their parents later on is 1 in 2."⁶⁶ Adults abused as children learned that abusive behavior is a form of problem solving. "Whatever the causes, experts generally agree that violence is learned behavior."⁶⁷

The caretaker may also resent the elderly person's dependency because it greatly restricts the caretaker's personal time.⁶⁸ Lack of close family ties may make it difficult for a family member to assume the great responsibility of caring for an elder.⁶⁹ The family member may not realize

health gets worse and never better. The caretaker may never see enough improvement to make the elderly parent less dependent for any length of time.

61. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 122-23.

62. *Id.*

63. R. GELLES, FAMILY VIOLENCE 19 (1979).

64. "Our current research . . . finds that children who are hit by their parents are more likely to use violence on their siblings and on their parents than children raised in nonviolent settings." *Id.* at 19, *cited in* Schechter, *supra* note 44, at 39.

65. Dr. Suzanne Steinmetz is an associate professor at the University of Delaware in the Department of Individual and Family Studies. She has written one book and coedited another on the topic of domestic violence (CYCLE OF VIOLENCE: ASSERTIVE, AGGRESSIVE AND ABUSIVE FAMILY INTERACTION (1977) and VIOLENCE IN THE FAMILY (S. Steinmetz & M. Straus eds. 1974)) as well as several articles. Dr. Steinmetz's description of the elder abuse situation that follows is often quoted.

If we were to label the 60's as the decade of interest in child abuse, and the 70's as the decade of wife abuse studies, then I predict, given the generally increasing concern for the elderly in public institutions, that the 80's will be the decade of the battered parent.

ELDER ABUSE HOUSE REPORT, *supra* note 1, at XXX.

66. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 59.

67. UNITED STATES COMM'N ON CIVIL RIGHTS, UNDER THE RULE OF THUMB; BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 3 (1982).

68. *Id.* at 62. Not only can the caretaker's daily routine and work schedule be interrupted, but personal time spent with spouse and other family members could suffer. Vacations may not be possible if the dependent parent cannot be left alone. The elderly family member may not have accepted that her children are adults. Consequently, she may not respect her children's right to privacy to the extent she should, may expect obedience as in the past, or may resent not being included in all the activities of the caretaker child. Demanding this attention stifles the caretaker, adding to the stress by not allowing the caretaker to care for others who need her attention, including herself. Steinmetz, *supra* note 43, at 8.

69. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 60.

what she has agreed to do before the parent moves in. Later, abuse or neglect may occur because the family member has not really accepted the responsibility of caretaker or rejects it once it becomes difficult.

Abuse may also be provoked. Dependent elderly are not always defenseless elderly. "Old age is a period of restriction, decline, and loss not only physically, but also intellectually, financially, and socially."⁷⁰ Aging is an individual process both in terms of degree and emotional acceptance. Everyone, however, including the elderly, has a strong need to be in control of his life.⁷¹ Dependency causes emotional stress at least as great in the elderly as that experienced by the caretaker.⁷² The elderly do not want to be a burden and resent being treated as such. Consequently they react in abusive ways against their caretakers.⁷³ Effective solutions may require services designed to help the elderly adjust to their aging.⁷⁴

Elder abuse is aggravated by services being inadequately available to families that need support in caring for older family members.⁷⁵ Much could be accomplished by alleviating the financial pressures, but this is not enough. Legislators should consider the emotional factors as well. "Above all, laws designed to protect the elderly must not contribute to stereotyping the aged by treating them as incompetents who cannot make decisions regarding their own welfare."⁷⁶

B. Profiles: The Abused and the Abuser

Abused elderly tend to be frail, dependent women over age seventy-five or men and women who are disabled or impaired.⁷⁷ They are typi-

70. Parmelee, *Protective Services for the Elderly: Do We Deal Competently with Incompetence?*, 2 L. & POL'Y Q. 397, 399 (1980).

71. *Id.*

72. Steinmetz, *supra* note 43, at 8-9; *see also* Johnson, *supra* note 56, at 60. Johnson notes that many elders feel useless after having lost the roles of employer, husband or wife, and friend. *Id.*

73. Steinmetz fully discusses this aspect of abuse in her article. She produced the following table on methods used by the elderly to control their adult children. These contribute to the stress on the caretaker, resulting in abuse.

TABLE II. Methods Used by Elderly to Control Their Adult Children

Methods	Percent
Scream and Yell	43
Pout or Withdraw	47
Refuse Food or Medication	16
Manipulate, Cry, or Use Physical or Emotional Disability	32
Hit, Slap, Throw Objects	22
Call Police or Others for Imagined Threats	10

Steinmetz, *supra* note 43, at 9.

74. Parmelee, *supra* note 70.

75. *See* Palincsar & Cobb, *supra* note 20, at 421.

76. Katz, *supra* note 2, at 704.

77. *See* ELDER ABUSE HOUSE REPORT, *supra* note 1, at XV; *see also* M. BLOCK & J. SINNOTT, *supra* note 2, at 76; Palincsar & Cobb, *supra* note 20, at 417.

cally abused repeatedly rather than in a single incident.⁷⁸ The abused elder has dependency needs similar to both battered children and battered women. Elders are often mentally competent although physically and financially dependent upon their children or other caretakers. Choosing to stay in an abusive situation does not make an elder incompetent.

Abused elders often fail to seek help or report their abuse. Parents are ashamed of raising abusive children and blame themselves for the behavior.⁷⁹ Others fear reprisal if they complain.⁸⁰ Some have no idea that help is available or how to get it.

Most abusers are relatives of the victim.⁸¹ Studies also show that abusers generally are experiencing great stress at the time of the abuse in the form of drug, alcohol, marital, or financial problems.⁸²

IV. LEGISLATIVE RESPONSES

Unfortunately, elder abuse is only beginning to be recognized. Recognition is essential before serious reforms can be instituted.⁸³ Recognition is especially important because government has always hesitated to intervene in family matters. The hesitation to intervene might be greater with women and elder abuse than with child abuse,⁸⁴ perhaps because husbands have been allowed to beat their wives, throughout history. Also, for the government to intervene, the elderly adult's right to make independent decisions about the abusive situation might be impeded. Government intervention, nonetheless, has occurred in varying degrees at both the state and federal levels.

A. State Role

States are empowered with the primary legislative authority over fam-

78. Palincsar & Cobb, *supra* note 20, at 417.

79. The House committee report cites the Minneapolis Police Department as observing the following:

A common comment made by many police officers regards an attitude of many elderly persons and the reporting of abuse. The problem is in the reporting, or more specifically, the lack thereof. Other family members and neighbors are reticent and the elderly would appear to be either unaware of the extent of the abuse, unable to report the situation, or simply resigned to a situation because of senility, fear, or embarrassment.

ELDER ABUSE HOUSE REPORT, *supra* note 1, at 44.

80. *Id.* at XV.

81. *Id.*

82. *See id.*; Katz, *supra* note 2, at 701; Palincsar & Cobb, *supra* note 20, at 418-19.

83. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 104. Up to now: "abuse in nursing homes has received the lion's share of publicity. As a result of public awareness the problem has diminished in scope. Similarly, if prevention of further cases of elder abuse is to take prominence, then it is imperative that sufficient attention be focused on the problem." *Id.* at 108.

84. *See id.*

ily matters.⁸⁵ Protecting victims of family violence is the states' responsibility. States have reacted differently to child abuse than to abuse of women.⁸⁶ The primary characteristic of child abuse legislation is mandatory reporting.⁸⁷ In contrast, states have reacted to abuse of women with domestic abuse acts providing for protective orders.⁸⁸ Legislation concerning elder abuse generally has followed the child abuse model, although some states have followed domestic abuse statutes.⁸⁹ For this reason, this Note will discuss both child and domestic abuse legislation.

Child abuse began to be recognized about twenty years ago.⁹⁰ Private organizations provided most of the aid given to child abuse victims at that time. Not until the late sixties and early seventies did the government begin to assume responsibility for child abuse victims. The first step taken by state legislatures was to pass juvenile court acts. The juvenile court acts had three main functions: (1) To define child abuse and neglect; (2) To establish evidentiary hearings on abuse or neglect accounts; and (3) To provide remedies such as intervention and removal from the home. The second step included establishing agencies that would provide protective services to abused children. Protective services are easily provided to children under the state's *parens patriae* power.⁹¹ Finally, states enacted mandatory reporting laws for suspected cases of child abuse.⁹² These laws are "based on three critical assumptions: (1) children are incompetent, helpless and vulnerable; (2) children are at the mercy of their caretakers; and (3) society has a protectable interest in children."⁹³

85. Schechter, *supra* note 44, at 2.

86. See generally Schechter, *supra* note 44.

87. For a brief history of government aid to victims of child abuse, see *id.* at 2-17.

88. For a general discussion of protective orders, see *id.* at 23-26.

89. *Id.* at 31-33.

90. *Id.* at 2-3. Cases were actually reported as early as the late 1800s but governmental recognition and response began only 20 years ago. The following history was based in great part on Schechter's article. *Id.*

91. An Illinois study defines *parens patriae* as follows:

This doctrine, which is traditionally used to support states' efforts to protect vulnerable citizens, involves remedial, therapeutic and care-giving responsibilities. It is the underlying principle for involuntary commitment and incompetency decisions. The theory allows the state to become the guardian of the general public. If individuals perceived to be at-risk cannot or refuse to make decisions in their best interests, the state, based on theories of *parens patriae*, shall do so.

J. CROUSE, *supra* note 2, at II-3. For an extensive legal overview of this doctrine as it relates to the elder abuse problem, see *id.* at II-3 to 14. See also Horstman, *Protective Services for the Elderly: The Limits of Parens Patriae*, 40 MO. L. REV. 215 (1975). "It is the duty of the state to protect those persons who, because of infancy, are legally incapable of protecting themselves, and to afford special protection to the rights of such minors because they are also citizens and wards of the state." Comment, *Parens Patriae—A Revised Judicial Approach in Medical-Religious Conflicts in Michigan*, 1981 DET. C.L. REV. 83, 83.

92. See Schechter, *supra* note 44, at 3.

93. Palincsar & Cobb, *supra* note 20, at 433.

States have also responded to the problem of battered women. Through legislation, state courts are authorized to issue protective orders on behalf of the victims.⁹⁴ These laws are commonly "based on the assumption that the victim is an emancipated, competent individual capable of making decisions which may require legal enforcement."⁹⁵ Protective orders issued under these laws direct the abuser to stop abusing and can be issued on an *ex parte* basis.⁹⁶ Half of the states have also enacted supportive service legislation for battered women.⁹⁷

State commitment to elder abuse has not been as strong. Legislating a solution is difficult because improper, well-meaning legislation can have serious, harmful effects on the elderly. Once a problem such as elder abuse is recognized by policymakers and legislators, the tendency is to find a quick solution. The elements of the elder abuse problem, however, are varied, delicate, and complex.

Elder abuse legislation modeled after child abuse statutes has been severely criticized.⁹⁸ The primary criticism is directed at the mandatory reporting of suspected cases of abuse.⁹⁹ Mandatory reporting should be used where victims are unlikely to report abuse themselves, thus making third-party reporting essential.¹⁰⁰ Prior to elder abuse reporting statutes, however, mandatory reporting of abuse was only used for "children and other 'incompetents' [who could not] speak for or protect themselves."¹⁰¹ Critics fear that use of mandatory reporting for the elderly implies the elderly are incompetent and unable, rather than unlikely, to report the abuse themselves.¹⁰² In some instances refusal of proffered protective services has triggered incompetency proceedings and resulted in institutionalization or guardianship.¹⁰³

Guardianships and conservatorships are protective services imposed

94. See Schechter, *supra* note 44, at 23.

95. Palincsar & Cobb, *supra* note 20, at 439; see, e.g., MINN. STAT. § 518B.01 (1982 & Supp. 1983) (the Minnesota Domestic Abuse Act).

96. Schechter, *supra* note 44, at 23.

97. *Id.* at 25. "Some legislatures have justified this new state role as necessary not only to help the victims themselves, but also to protect children who may be forced to witness the violence, and law enforcement officers who may be compelled to intervene." *Id.* This kind of legislative "thinking" is commendable. In a sense it is treating the abuse problem as a whole, realizing that multiple abuse is occurring in a single family.

98. See Faulkner, *supra* note 2, at 74-80.

99. See *id.* at 76-80.

100. *Id.* at 76.

101. *Id.* Faulkner states that the state is enacting *parens patriae* power when enforcing mandatory reporting statutes. *Parens patriae* generally applies to such things as incompetency and guardianship proceedings, involuntary medical treatment, and involuntary confinement. *Id.* When *parens patriae* power is being exerted in the case of competent elders, there is justified concern that rights may be violated or that these types of proceedings necessarily follow from mandatory reporting statutes.

102. See *id.*

103. *Id.* at 84-85.

under the state's *parens patriae* power. Protective services are intended to preserve the freedom and resources necessary for an aging person to maintain some independence. "Their effectiveness, however, depends upon proper conceptualization, definition, and application. Legal intervention can enhance effectance by easing external pressures and permitting elders to pursue other, less taxing self-determinative functions; but it also has the potential for destroying perceived control by unduly limiting effectance outlets."¹⁰⁴

In many jurisdictions, guardianship takes away a person's right to vote, marry, manage property, make a will, or choose a place to live.¹⁰⁵ Elder abuse victims may consider their alternative much worse than the abuse itself, yet refusal to accept protective services, such as nursing home placement, could result in involuntary guardianship proceedings.¹⁰⁶

Minnesota has recognized the need for less restrictive measures. Currently, the Minnesota law

relating to conservatorships seeks a balance between providing the minimum protection necessary and protecting the civil rights of the conservatee. One seeking conservatorship must give careful thought to the problem to be addressed and tailor one's petition to the limited remedy needed. A petition for conservatorship is required to show "the powers the petitioner believes are necessary in order for a conservator to protect and supervise the conservatee's person or property."¹⁰⁷

There is a great need for development of less restrictive protective services for victims of elder abuse.¹⁰⁸ Legislatures, courts, and the commu-

104. Parmelee, *supra* note 70, at 400.

105. Redmond, *Hitting the Elderly*, 2 FAM. ADVOC. 17, 17 (1980).

106. Merely because an elder chooses to remain in an abusive family situation does not make her incompetent. The elder often fears social workers, doctors, and lawyers who try to help the elder out of her abuse. The elder fears that these people will only bring her institutionalization, hospitalization, or guardianship, taking away her home and what little independence she may still enjoy. These fears are well-founded.

The refusal to accept "reasonable" services is often sufficient to convince a caseworker that financial or institutional "protection" is needed. The social work profession is not immune from society's inclination to treat older persons like children, to decide what is best, and then proceed to "suggest" a solution. The refusal of a client to accept such a "reasonable suggestion" is often viewed as proof of impairment warranting intervention and involuntary assistance.

Faulkner, *supra* note 12, at 85.

107. Wolfson, *supra* note 44, at 33; *see also* MINN. STAT. §§ 525.539-6198 (1982) (Minnesota's guardianship and conservatorship law).

108. If the state makes a commitment to elder abuse victims, they must be willing not only to identify the problem, but to make services available to help the victims. Many states have not made the commitment to make sufficient services available, nor do they understand the problem sufficiently to implement successful services. *See generally* Schechter, *supra* note 44.

The second principle behind mandatory reporting, as part of a solution to abuse, is the assumption that services will exist in the community to solve the problem of abuse. If removal from the subject's domicile is necessary the new environ-

nity must remember that an effective solution will be one that does not take over the elders' lives, but underwrites them. The solution must not only protect, but also serve.¹⁰⁹ Mandatory reporting is only the first step.

Reporting statutes are necessary to identify specific cases of abuse and for problem recognition in general. Twenty-one states had enacted mandatory reporting laws by spring of 1981.¹¹⁰ Reporting statutes, however, are not sufficient solutions. Guardianship or intervention laws must be amended and community services developed to work with the reporting statutes. True, current reporting statutes in some jurisdictions might trigger incompetency proceedings, but that will change as elder abuse becomes better understood. Without the recognition of elder abuse, that occurs as a result of mandatory reporting, the problem will be ignored.¹¹¹ Without recognition there is no incentive for reform. Mandatory reporting statutes have been criticized as creating an expectation of services and solutions which cannot be met.¹¹² Until the need is established, however, no solutions will be found.

Other states have used domestic abuse statutes to treat elder abuse.¹¹³ This model is intellectually appealing because it assumes the victim is a competent adult capable of decisionmaking.¹¹⁴ The proposed solutions are

directed toward strengthening the victim and encouraging independence by providing crisis and long-term counseling, support groups, programs for economic independence, haven or "safe houses," etc. In addition, use of the criminal courts, instead of family courts is encouraged in an effort to gain acceptance of the view that spousal [and elder] abuse is a criminal assault not a family offense.¹¹⁵

ment should be, at the least, an improvement which will nurture, protect and encourage the subject of the proceedings. . . . In addition, it assumes attention will be paid to external factors impacting negatively upon the family, such as unemployment [and] lack of health care.

Faulkner, *supra* note 12, at 77.

109. Parmalee, *supra* note 70, at 415.

110. Palincsar & Cobb, *supra* note 20, at 432.

111. Faulkner, *supra* note 12, at 79.

112. *Id.* at 81.

113. The language in many domestic abuse statutes is broad enough to cover elderly family members. The Minnesota Domestic Abuse Act, for example, includes in its definition of domestic abuse, physical harm between family members. MINN. STAT. § 518B.01, subd. 2(a) (Supp. 1983). Although § 518B.01 does not protect all victims of elder abuse, it may be used to help in some situations.

114. Palincsar & Cobb, *supra* note 20, at 439.

115. Faulkner, *supra* note 12, at 87. Faulkner notes:

Many of the terms used to describe victims of elder abuse apply equally well to younger female victims of spousal abuse. Such descriptions as "dependent" (economically and financially, as well as physically), "unwilling to seek help," "self-blaming," "ashamed," "ignorant of societal protection" and "accepting of the violence" can describe an eighty-year-old victim as well as a thirty-five-year-old victim of domestic violence.

Id. at 86.

It is more difficult, however, for the elderly victim to take advantage of these statutes. The victim is required to take positive action to obtain a protective order. The order often only provides a short-term solution.¹¹⁶ An elderly victim might be physically incapable or lack the mobility to go to court seeking protection. Parents might also be less likely than spouses to admit abuse when they understand that their child could face criminal charges as a consequence. During a House Committee Hearing on elderly abuse, one witness stated of her experience:

Parents never cease being parents. They continue to protect their children and shield them from the outside world. That outside world is a particularly threatening one when it is the criminal justice system. Among the victims I interviewed in the district attorneys [sic] office was an elderly couple whose daughter and boyfriend had physically abused them. The abuse included beating them and robbing them at knife point yet they wanted the charges against their daughter dropped. Evidently the fear of repeated abuse was not as great as the embarrassment caused by admitting that their own daughter was abusing them. . . .¹¹⁷

Although the reporting and protective order approaches differ, both share one problem. Neither approach adequately deals with neglect. Domestic abuse statutes usually do not address neglect. Most mandatory reporting laws do not require neglect to be reported in the case of child abuse; neither do elderly statutes. Generally, children are not legally responsible for their parents. Neglect of elders is only "legally" abusive if the elder is institutionalized or the caretaker is the guardian or has a special legal duty of care to the elder.¹¹⁸

B. The Minnesota Response

In 1980, Minnesota enacted the Vulnerable Adults Protection Act,¹¹⁹ which became effective January 1, 1981.¹²⁰ Using this Act as a first step,

116. Palincsar & Cobb, *supra* note 20, at 441. An elderly victim may not have the same alternatives available as a younger spouse.

117. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 108-09 (testimony of Mrs. Ferraro). Mrs. Ferraro was the first witness to testify at the Subcommittee on Human Services hearing to evaluate the problem of domestic violence and the elderly. "Prior to her election to Congress, Ms. Ferraro had served as assistant district attorney in Queens. She founded and was chief of a special victims bureau which handled crimes involving senior citizens and intrafamilial violence." *Id.* at 108.

118. See Palincsar & Cobb, *supra* note 20, at 438. This flaw within some state laws should be corrected.

119. See Act of Apr. 11, 1980, ch. 542, 1980 Minn. Laws 712 (current version at MINN. STAT. § 626.557 (1982 & Supp. 1983)).

120. E. JANUS, VULNERABLE ADULTS PROTECTION ACT—A SUMMARY AND ANALYSIS (1982). Janus is the managing attorney for the Legal Aid Society of Minneapolis. He is the former managing attorney for Legal Advocacy for Developmentally Disabled Persons in Minnesota and he had a strong voice in the implementation of § 626.557 (1982 & Supp. 1983).

"Minnesota is determined, through its social services systems, to do what it can to prevent, identify, intervene and alleviate the problems of adult maltreatment."¹²¹ The state's public policy is to identify suspected cases of abuse and provide assistance to victims.¹²² To be considered a vulnerable adult under the Act,¹²³ a person must be at least eighteen years of age and receive services from a licensed facility¹²⁴ or be "unable or unlikely to report abuse or neglect without assistance because of impairment of mental or physical function or emotional status."¹²⁵ Vulnerable adults receiving institutional services automatically qualify and are easily identified.

The second standard is discretionary and meant to pick up vulnerable adults not included in the first definition. This second standard is more difficult to apply.¹²⁶ Application of the "impairment of emotional status" clause involves the most discretion. One commentator stated that vulnerability based on this test "should depend on whether the person has made an *informed* and *voluntary* choice not to report."¹²⁷ In his opinion, even if a person is determined to be vulnerable under any definition of the Act, services may be accepted or rejected.¹²⁸ Under this interpretation, the elder's rights are protected. Incompetency petitions would not be heard on the basis that the victim refused services. This feature is not clearly stated in the Act, however. In fact, the Minnesota Department of Welfare, charged with partial responsibility for enforcing the Act,¹²⁹ has promulgated a rule whereby refusal to accept services can trigger intervention proceedings.¹³⁰

121. MINN. DEPT. OF PUBLIC WELFARE, 1981 MINNESOTA VULNERABLE ADULTS ACT STATISTICAL REPORT 1 (1982).

122. MINN. STAT. § 626.557, subd. 1 (1982).

123. MINN. STAT. § 626.557, subd. 2(b) (Supp. 1983).

124. MINN. STAT. § 626.557, subd. 2(b)(1) & (2) (Supp. 1983). Janus describes a vulnerable adult under the Act as one who satisfies:

one of two alternative components: a *categorical* component or a *functional* component. Under the categorical definition, a person is considered vulnerable merely by being a resident or patient of a licensed facility. This definition was written into the law to provide some certainty to the membership of the class of vulnerable adults.

E. JANUS, *supra* note 120, at 5.

125. MINN. STAT. § 626.557, subd. 2(b)(3) (Supp. 1983). Janus refers to this as the functional component because it depends on an analysis of the person's functioning for its application. E. JANUS, *supra* note 120, at 5.

126. There are four elements to this second definition. "To be considered vulnerable, a person must be (1) unable or unlikely to (2) report abuse or neglect (3) without assistance (4) because of impairment or emotional status." E. JANUS, *supra* note 120, at 5. Notice that the unlikelihood of reporting must be *caused* by the impairment.

127. *Id.* at 6.

128. *Id.*

129. *See* MINN. STAT. § 626.557, subds. 2(g), 16 (1982 & Supp. 1983).

130. 6 MINN. CODE AGENCY R. § 9555.7200, subp. 8 (1983). The Minnesota rules define impairment of mental, physical, or emotional status as:

"Impairment of mental or physical function or emotional status" means a condi-

The Minnesota Act also defines and requires reporting of neglect.¹³¹ The Act defines caretaker such that some children have an affirmative duty of care toward their parents based solely on the family relationship.¹³²

The purpose of the Act is to prevent abuse and neglect.¹³³ Therefore, "[i]ts most direct thrust is to remove the incentive to abuse or neglect which may be caused by the victim's inability to report."¹³⁴ Subdivision three of the Act mandates that professionals engaged in the care or education of vulnerable adults or in law enforcement must report suspected cases of abuse.¹³⁵ Reports can be made to the police, the local welfare agency, or the appropriate licensing agency.¹³⁶ Intentional failure to report is a misdemeanor.¹³⁷ Anyone who intentionally or negligently fails to report is also liable for damages caused by the failure.¹³⁸

tion which includes being substantially unable to carry out one or more of the essential major activities of daily living, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working; being unable to protect oneself from hazardous or abusive situations without assistance; a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life; substantial difficulty in engaging in the rational decision-making process and inability to weigh the possible benefits and risks of seeking assistance; a condition in which an individual is so fearful, so ashamed, so confused, or so anxious about the consequences of reporting that that individual would be unable or unlikely to make a responsible decision regarding whether or not to report abuse or neglect.

Id. Although the definition of a vulnerable adult under the Rules parallels that in the statute, the broad definition of an impaired individual taken together with the agency authority to intervene against the abused victim's wishes, implies less autonomy for the elder abuse victim than Janus enunciates. *See supra* note 128 and accompanying text. The DPW rules state:

If a vulnerable adult who is the victim of abuse or neglect by a caretaker refuses an offer of services from a local social services agency and in the judgment of that agency the vulnerable adult's safety or welfare is in jeopardy, the agency shall seek the authority to intervene on behalf of that adult. If the agency believes it to be in the adult's best interest, it shall seek or help the family or victim seek any of the following:

- B. guardianship or conservatorship . . . [or]
- C. a hold order or commitment

6 MINN. CODE AGENCY R. § 9555.7600 (1983).

131. MINN. STAT. § 626.557, subd. 2(e) (Supp. 1983). "Neglect" means failure by a caretaker to supply the vulnerable adult with necessary food, clothing, shelter, health care, or supervision. *Id.*

132. "Caretaker" is defined in MINN. STAT. § 626.557, subd. 2(c) (Supp. 1983) to mean "an individual or facility who has responsibility for the care of a vulnerable adult as a result of family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, or by contract, or agreement."

133. E. JANUS, *supra* note 120, at 5.

134. *Id.*

135. MINN. STAT. § 626.557, subd. 3 (Supp. 1983).

136. *Id.*

137. MINN. STAT. § 626.557, subd. 7(a) (1982).

138. MINN. STAT. § 626.557, subd. 7(b) (1982).

After one year, data accumulated from reporting under the Act indicates that elder abuse is a serious problem in Minnesota.¹³⁹

While the first year of implementing a law is merely scratching the surface as far as revealing the scope of the problem, the first year Minnesota data already begins to indicate patterns consistent with what is being found in other states and in a few major studies . . . that there is a great deal of violence against family members, that an inordinate number of the victims are disabled, older-than-average, white and female, and that the “old-old” (age 75+) is a major victimized population group.¹⁴⁰

C. Federal Role

Although states have the primary responsibility to aid victims of domestic abuse, the federal government has enacted legislation which encourages state governments to take action.¹⁴¹ The federal government assumed responsibility for the protection of child abuse victims when it passed the Federal Child Abuse Prevention and Treatment Act in 1974.¹⁴² The Prevention, Identification, and Treatment of Elder Abuse

139. The following data was taken directly from the 1981 MINNESOTA VULNERABLE ADULTS ACT STATISTICAL REPORT, *supra* note 121. This data includes maltreatment of all vulnerable adults, including the mentally retarded and mentally ill. The data is not limited to elder abuse; however, elder abuse is included within the data.

In Minnesota, three counties are considered “urban” counties. Those counties are Hennepin, Ramsey, and St. Louis. ‘All other counties are considered “rural”. In 1981, 51% of abuse reports came from rural counties while 49% came from urban counties. *Id.* at 6. The data reveals that 65% of the victims were female while 35% were male. This is consistent with national abuse data. *Id.* at 6. The data also revealed that 35% of the abusers were related to the victim. Of those who were related to the victim, two-thirds were either spouses or children. *Id.* During the first year the statute has been in effect, 282 of the 507 reports have involved abuse of adults 60 and older. Sixty-four percent of those reports involved adults over 75 years old. This figure is also consistent with national data. *Id.* at 10. Also interesting is that 111 of the reported victims of abuse were not suffering from any impairments. *Id.* at 12. Based on the definition of vulnerable adult in the statute and the make-up of the victims, it may be a fair assumption that most of those 111 cases were elder abuse cases.

	Total
Total	507
Physical	98
Mental	249
Emotional	49
None	111

Id. at 12.

Finally, almost half of the reported complaints of abuse were substantiated, with about one-third inconclusive or unable to be substantiated. Only about one in five cases was actually disproven. *Id.* at 18.

140. *Id.* at 1.

141. Schechter, *supra* note 44, at 2.

142. Pub. L. No. 93-247, 88 Stat. 4 (1974) (current version at 42 U.S.C. §§ 5101-07 (1982)); see Schechter, *supra* note 44, at 3-4. This Act created a national center on child abuse and neglect, mandated direct federal research into causes and prevention of child

Act of 1981 (PITEAA),¹⁴³ would have paralleled the child abuse act. PITEAA would have required a National Center on Elder Abuse to be established to collect, conduct, and publish research on elder abuse. It would have provided financial and technical assistance to agencies and organizations concerned with elder abuse. PITEAA further provided for funding of state programs, would have required mandatory reporting for a state to receive federal aid for state elder abuse programs.¹⁴⁴ PITEAA, unfortunately, failed to pass.¹⁴⁵

V. PREVENTION, STRATEGIES, AND POLICY ALTERNATIVES

As the number of older Americans increases¹⁴⁶ and as their caretakers experience increased pressure, the potential for elder abuse grows geometrically. Society must find solutions to aid victims and alleviate the stress of caretakers.

Increasing resources to family caretakers is perhaps the most effective way to lessen the pressures of caring for elderly persons.¹⁴⁷ The House Select Committee on Aging has proposed that several steps be taken toward accomplishing this goal. First, Congress should "amend Title III of the Older Americans Act to require states to give priority to families with dependent elderly members when allotting legal and in-home serv-

abuse, and provided grants to assist state child abuse programs. *Id.* In order to qualify for these grants, states were required to meet federal standards in their own child abuse programs. 42 U.S.C. § 5103(2)(A)-(J) (1982).

143. Prevention, Identification, and Treatment of Elder Abuse Act of 1981, H.R. 769, 97th Cong., 1st Sess. (1981).

144. *Id.*; see Faulkner, *supra* note 12, at 88-89.

145. PITEAA was referred to the House Committees on Education and Labor, and Energy and Commerce. The Act was never reported out of the committees or introduced to the next Congress.

146. Kapp, *Promoting the Legal Rights of Older Adults*, 3 J. LEGAL MED. 367 (1982). Kapp states:

It should come as no surprise to anyone that there are a great many older people residing in the United States today and that the size of this group is rapidly expanding, both in absolute numbers and in its percentage of the total population. In 1900, only 3.1 million Americans were 65 years of age or older (4 percent of the total). By 1980, the number had increased eight-fold, reaching 25 million (11 percent of the population). It is conservatively projected that by the year 2000, nearly 32 million individuals will exceed age 65 (12 percent of the population), with an even greater explosion between the years 2010 and 2030 as the "baby boom" generation begins to enter old age.

Id. at 367.

147. ELDER ABUSE HOUSE REPORT, *supra* note 1. The report notes that:

Experts and State officials almost universally agree that the provision of more social services to families who are caring for an older person is essential. They contend that more home health services, personal services such as bathing and dressing the older persons, homemaker services, home-delivered meals, adult day care, and respite care (short-term total care), would help lessen the family stress that can result from constantly responding to the needs of a dependent family member.

Id. at 126.

ices.”¹⁴⁸ Caretaker families would further benefit if Title XX of the Social Security Act¹⁴⁹ were amended to make them eligible for aid.¹⁵⁰ Title XX funds could also be used to provide emergency shelters for elders as a protective service.¹⁵¹ Caretaker families and elders would both benefit by eliminating the one-third reduction in Supplemental Security Income caused by the aid recipient residing in another person’s home.¹⁵² Amendments to Medicaid¹⁵³ and Medicare¹⁵⁴ that would remove limitations on benefits received by elderly living with relatives or caretakers would help decrease the family stress that results from the caring for an elderly family member.¹⁵⁵ Tax credits provided to caretakers to help them bear the financial burden of elderly care would also lessen family stress.¹⁵⁶ Families caring for the elderly should be supported emotionally through community services and helped financially through state and federal government programs.¹⁵⁷

The changes outlined above are not unopposed. Progress has been made in aiding victims of family violence but “this process is threatened by a confluence of three anti-interventionist forces.”¹⁵⁸ First, the Reagan administration is determined to reduce government spending on social services.¹⁵⁹ Not only did the Prevention, Identification and Treatment of Elder Abuse Act fail but passage of the Domestic Violence Prevention

148. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 126. For a discussion of the Older Americans Act, see Wylie, *supra* note 3.

149. Title XX is the section of the Social Security Act providing block grants to states for social services. See 42 U.S.C. §§ 1397-1397e (1976). For an indepth discussion of Title XX, see Nelson, *A Role for Title XX in the Aging Network*, 22 GERONTOLOGIST 18 (1982).

150. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 126.

151. *Id.*

152. *Id.* at 127. The Supplemental Security Income Program is administered by the Social Security Administration. It is designed to aid low-income persons, 65 or older, blind or disabled, to maintain an adequate standard of living. For a list of eligibility requirements, see MINNESOTA LEGAL SERVICES COALITION, KNOWING YOUR RIGHTS 8-9 (1982) [hereinafter cited as KNOWING YOUR RIGHTS]. See generally, 15 CLEARINGHOUSE REV. 259-61, 742-47 (1981).

153. “Medicare is a health insurance program administered by the Social Security Administration to help those 65 years old and over, and many severely disabled people under 65, to pay the high costs of health care.” KNOWING YOUR RIGHTS, *supra* note 152, at 16.

154. “Medicaid” is a joint federal-state program which provides payment for medical services for those with low incomes and limited resources, who meet the Medicaid qualifications. There are no deductibles or limitations on the number of days of care which will be paid. If you are eligible for Medicaid it will generally pick up the balance of medical bills which are not covered by Medicare. You do not have to be covered by Medicare to be eligible for Medicaid.

Id. at 24.

155. ELDER ABUSE HOUSE REPORT, *supra* note 1, at 126-27.

156. *Id.* at 128; see Johnson, *supra* note 56, at 66.

157. Redmond, *supra* note 105, at 19. Redmond suggests several ways communities can help the elderly and their families. See also Steinhauer, *Geriatric Foster Care: A Prototype Design and Implementation Issues*, 22 GERONTOLOGIST 293 (1982).

158. Schechter, *supra* note 44, at 33.

159. For a discussion of proposed 1983 federal health cuts including cuts in Medicaid

and Treatment Act was aborted by plans to terminate the National Center on Child Abuse and Neglect.¹⁶⁰ Second, some professionals dealing with family violence are opposed to state intervention in family matters.¹⁶¹ Finally, some legislators propose that family matters should be free of government control. Government involvement is considered a violation of the integrity of the family. Nonetheless,

[t]he ideas that the family should be kept intact and that the state cannot serve as a substitute for the family may be used as handy excuses by those who simply do not want to invest government resources in social programs. Where government programs have been relatively ineffective because of inadequate funding, it will be all too easy to end the programs rather than try to improve them.¹⁶²

By eliminating federal family violence programs and federal funds to state programs, the government either ignores the problem or denies that it exists. A result will be cut-backs in state programs as well.¹⁶³ The problem will not go away, however. Continued ignorance will only increase the problem.

VI. CONCLUSION

The elder abuse problem is a widespread national scandal. Recognition and relief are required by lawyers, legislators, and communities at both the state and federal level. Most states have only recently begun to respond to the needs of elderly abuse victims.¹⁶⁴

Recent legislation has been criticized. Most criticism has focused on mandatory reporting statutes. Critics argue that lack of available services makes reporting futile. Others point out that current laws in some jurisdictions can trigger guardianship or involuntary commitment proceedings when offered protective services are rejected by a victim discovered under a mandatory reporting statute.

Mandatory reporting laws should be amended to specify that the victim is free to refuse protective services. Intervention and commitment proceedings should never be initiated solely because services are refused. If a victim refuses services, however, he should not be abandoned. Community service workers should keep records of abuse victims choosing to remain in abusive situations. As new protective services become available, abuse victims would be informed of their new options. This would

and Medicare, see *National Health Law Program Proposed Federal 1983 Health Cuts*, 16 CLEARINGHOUSE REV. 32-35 (1982). *Contra*, Johnson, *supra* note 56, at 69.

160. Schechter, *supra* note 44, at 33.

161. *Id.*

162. Schechter, *supra* note 44, at 34-35.

163. *Id.* at 33.

164. The Minnesota legislature has evidenced its concern for protection of the elderly through the enactment of the Minnesota Vulnerable Adults Protection Act. Act of Apr. 11, 1980, ch. 542, 1980 Minn. Laws 712 (current version at MINN. STAT. § 626.557 (1982 & Supp. 1983)).

permit abuse victims to continually review their decisions to remain in the abusive situation. New, less restrictive alternatives may be more appealing. For example, an elder might agree to go to a community geriatric day-care program whereas the same victim may have refused nursing home placement.

Despite their problems, mandatory reporting statutes have merit. Mandatory reporting statutes are the first step toward an effective solution. Mandatory reporting is essential for recognition of the problem.¹⁶⁵ Recognition is the necessary incentive for development of better protective services and better laws.

165. *But see*, Faulkner, *supra* note 12, at 80-81.